

**CAPITAL PROJECTS ADVISORY REVIEW BOARD**

**General Administration Building  
210 11<sup>th</sup> Street SE, Conference Room 332  
Olympia, Washington  
March 9, 2006  
9:00 AM**

**Final Minutes**

---

<b><u>MEMBERS PRESENT</u></b>	<b><u>REPRESENTING</u></b>	<b><u>MEMBERS ABSENT</u></b>	<b><u>REPRESENTING</u></b>
Gerald "Butch" Reifert	Design Industry	Appointment Pending	House of Representatives (R)
Rocky Sharp	Specialty Contractor	Sen. Dave Schimdt	Senate (R)
Ed Kommers	Specialty Contractor	Sen. Phil Rockefeller	Senate (D)
Carolyn Crowson	OMWBE	Dan Vaught	School District Project Rvw Bd
John Lynch (Chair)	General Administration		
Rodney Eng	Cities/Counties/Ports		
Michael Mequet	Cities/Counties/Ports		
Wendy Keller	Public Hospital Project Rvw Bd		
Larry Byers	Insurance/Surety Industry		
Daniel Absher	General Contractor		
Gary Ballew	Cities/Counties/Ports		
Olivia Yang	Higher Education		
David D. Johnson	Construction Trades Labor		
Rep. Kathy Haigh (Vice Chair)	House of Representatives (D)		

**STAFF & GUESTS**

Nancy Deakins, GA	Michael Transue, AGC
Searetha Kelly, GA	Dick Lutz, Centennial Construction
Valerie Gow, Puget Sound Meeting Services	Ashley Probart, Association of Washington Cities
Nora Huey, King County	Darlene Septelka, King County
Dick Goldsmith, AWPFD	
Chris Hirst, Preston Gates	

**Welcome & Introductions – Chair's Comments**

Chair John Lynch called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:02 a.m.

A meeting quorum was attained. Chair Lynch reviewed the meeting agenda.

**Approve Agenda**

A discussion on House Bill 1384 regarding competitive negotiation contracts was added to the agenda.

**The agenda was approved as amended.**

### **Approval of February 9, 2006 Minutes**

A correction was requested on the minutes of February 9, 2006:

Correct the spelling of Rodney Eng's name on page 2.

**David Johnson moved, seconded by Gary Ballew, to approve the minutes of February 9, 2006 as amended. Motion carried unanimously.**

### **Public Comments**

There were no public comments.

### **Reports from Subcommittees**

#### ***Reauthorization Subcommittee – Rodney Eng***

Mr. Eng reported on the meetings of the subcommittee and the three task forces. Overall, progress is not proceeding as quickly as everyone wanted. However, the discussions are bringing some issues closer to resolution with recommendations nearly ready to provide to the CPARB.

*Representative Haigh arrived at the meeting at 9:07 a.m.*

The Owner and Project Eligibility Task Force has recommended with concurrence by the subcommittee of centralized approval boards for both projects and owners. Mr. Eng referred members to a copy of a flow chart outlining how a centralized board might function. Mr. Eng walked members through the flowchart for General Contractor/Construction Manager (GC/CM) project application review and/or approval.

Gary Ballew referred to the reference in the minutes concerning the concept of two centralized boards in eastern and western Washington to help with the geographical separation. Mr. Ballew expressed concerns about the potential lack of qualified board members from eastern Washington. Mr. Eng said the task force recognizes that one factor that might diminish the acceptability and viability of a centralized board is that the board could become a barrier in the process, especially pertaining to time. There are many duties the board may be asked to do, which could become a tremendous burden if the board is comprised of volunteers. Task force members recognized there are concerns about the time factor, size of the board, and balance of the board. Mr. Ballew said he prefers a board that meets often rather than two boards meeting less often.

Chair Lynch asked whether Design Build (DB) could undertake a similar process. He asked why the concept is only limited to GC/CM. If an owner does not have current legislative authority, the first step in the flow chart might open the process to an unlimited number of projects. Mr. Eng responded to the DB question and noted the task force has not reached that point in the discussion. The next approach for the task force is to consider the DB process and make a step-by-step analysis. Mr. Eng said he has concerns given the DB projects will be less developed.

Michael Mequet added the task force is focused on GC/CM first because there is a perception that something is "broke" and needs fixing. That same perception doesn't exist for DB.

Mr. Eng addressed Chair Lynch's second question. There are a limited number of jurisdictions that have authority. There could be other restrictions upon who can utilize the process. There has been more than one concern that a complete elimination either of a size restriction or other way of measuring jurisdictions and/or a dollar threshold for projects may not be entirely eliminated.

Olivia Yang referred to those owners who do not currently have the authority for GC/CM. She indicated the issue is under the Expansion Subcommittee and that the subcommittee is planning to review the issue in April and May.

Chair Lynch said another function of the centralized board process is to replace the public hearing requirement under the current statute. Mr. Eng confirmed the statement and added the subcommittee believes there are a number of other benefits of having a centralized board, such as a centralized location where anyone can receive information about a potential GC/CM project. The Data Collection Subcommittee is also considering the centralized board as a place to centralize data.

Mr. Ballew added that there are concerns with adding new owners and whether there will be some criteria established. Another consideration is a phased approach to allow more entities to build up the level of experience for both owners and contractors with more owners added over time so as not to overwhelm the process at the onset.

Chair Lynch noted that although the recommendation is not ready for submittal to the CPARB, it appears some progress has been made. Mr. Eng said to a certain extent, the subcommittee is offering a broader concept to the CPARB for feedback to the subcommittee. The subcommittee understands the deadline and will try to move towards drafting legislation. It is easier to address concerns now rather than after draft legislation is presented. In general, there will be increasingly more overlap in issues between the Reauthorization and Expansion Subcommittees.

*Rocky Sharp arrived at the meeting at 9:24 a.m.*

Mr. Eng advised that the Maximum Allowable Construction Cost (MACC) Task Force is concentrating on when to set the MACC. After the GC/CM articulated the problems, setting the MACC early shifts way too much risk of changes in market conditions to the GC/CM and it is out of proportion to the reward contractors receive through being the GC/CM on a project. The specific proposal under discussion is a concept of a requirement of not setting the MACC before 90% completion of the design. There was much discussion and Mr. Eng said he raised some concerns because market condition fluctuations may not be permanent and may only be temporary and flexibility owners might lose from early setting of the MACC. There was sufficient articulation of the current conditions that the task force and subcommittee reached a consensus that the MACC should be set no earlier than 90% completion of the design.

Chair Lynch confirmed there was consensus from the subcommittee and it's one of the items on the list of 20 that can be checked off. Another subcommittee recommendation was the approach to remove the sunset entirely or offer a new sunset date. The subcommittee recommended pursuing a new sunset date.

Mr. Eng referred to the Contractor Task Force and noted several issues are approaching consensus. Members are moving forward on a number of subcontractor issues. One issue is subcontractor eligibility. There was a proposal to eliminate in RCW 39.10.061 the subcontractor eligibility requirements. Members discussed and generally agreed that there must be some form of pre-qualification. One area of focus is where there is a need for builder design input into an aspect of a project. One example is a curtain wall design on large buildings.

Specified general conditions is another issue. The subcommittee wants to regularize the use of specified general conditions. The actual issue is that many requirements included in specified general conditions are also included in bid packages with subcontractors responsible for items that they normally do not have responsibility for. Most of those requirements are normally the responsibility of the general contractor. The issue has been addressed by modifying or expanding what the general contractor is allowed to do through a concept called "negotiated services" that are normally completed through reimbursement or an allowance.

Specifically, the owner and GC/CM would be authorized to address the issues. This would eliminate one of the concerns by subcontractors. The resolution would be outside the MACC and secondly, it wouldn't count against the 30% limit on self-performance by the GC/CM.

Discussion followed on the definition of a "curtain wall" and how the bidding process interfaces with the eligibility and qualifications requirements.

Chair Lynch said the overall issue in GC/CM is how to handle the issue of pre-qualifying certain subcontractors. One approach is not to address it and just use responsibility measures. Mr. Eng said the subcommittee is focusing to greatly restrict the use of pre-qualification in the subcontract bid packages. The subcommittee believes the responsibility analysis is sufficient to meet the concerns of the subcontractors, GC/CM, and the owners on most projects. He indicated its possible there will be no broad right for pre-qualification, and that the subcommittee is close on coming to consensus.

Rocky Sharp noted that most members are agreeable to removing the broad pre-qualification but that in special situations the right to pre-qualify should be preserved. Butch Reifert indicated on some special projects, such as those requiring Silver Leadership in Energy and Environmental Design (LEED) design, some pre-qualification language will be required. Carolyn Crowson added that pre-qualification tends to limit small businesses. Chair Lynch reported there is interest in limiting pre-qualification and handling most situations through defining what constitutes a responsible contractor and let the screening proceed in that fashion. The number of situations that it may cover is still under discussion. Dave Johnson offered that from labor's perspective, eligibility and pre-qualifications are understandable especially when it pertains to specialty areas but that the responsibility aspect is also important and having some definition of a responsible contractor will be important. Just because a subcontractor offers a low bid doesn't mean the subcontractor is responsible.

Representative Haigh commented on several comments she's received about using language of "best value" versus low bidder.

Mr. Eng said the task force also addressed the issue of work that has been completed but paperwork (change order) has not been finalized resulting in the subcontractors financing a part of the work for some time until the paperwork catches up. The issue has been recognized and members are developing language to address the concerns.

#### **House Bill 1384 – Competitive Negotiation Contracts**

Chair Lynch thanked Representative Haigh for her efforts in securing the CPARB's operating budget. Representative Haigh commented the effort was successful and resulting in funding the CPARB and \$50,000 for data collection. There will be many decisions to make next year. She encouraged members to continue their efforts and indicated she will to ensure the Board's budget reauthorization.

Representative Haigh briefed members on the passage of HB 1384. Jim Roland, Energy Northwest, has offered to inform the CPARB about where the bill originated and why it was needed. She suggested if the CPARB has concerns, the issue can be discussed for adjusting the legislation. She noted the Public Utility Districts (PUDs) are not represented on the CPARB.

ED Kommers pointed out that the competitive negotiation contract process is the CPARB's fourth duty in analyzing the effects of that procurement process for recommendations to the legislature. The disappointing aspect is why the CPARB is involved in its process when legislation is passed that completely overlooked the CPARB review process. The legislation was passed without any check and balances provided by the CPARB. Representative Haigh stressed the importance for CPARB to render a recommendation to the legislature.

Chair Lynch noted except for recommending a veto to the Governor, there isn't much the CPARB could do this year. Mr. Johnson noted the building trades as well as the Association of General Contractors (AGC) have sent a letter to the Governor requesting a veto of the bill and that it is transferred to the purview of the CPARB. He suggested it is appropriate for the CPARB to make a recommendation to the Governor. The building industry is strongly opposed to the legislation as there is no way to detect bid shopping under the negotiated bidder process. Once a bid has been submitted, the contractor can work with the project sponsor behind closed doors where a deal can be negotiated and the bid is awarded.

Chair Lynch distributed a copy of the bill as passed.

Representative Haigh reported she voted against the bill and will be sending a letter to the Governor explaining why she voted against the bill and what her concerns are.

Mr. Kommers said the issue is not whether passage of the bill is right or wrong but rather that it never undertook the process of review by the CPARB. It's a poorly written piece of legislation.

Mr. Johnson said the focus was on renewable energy and there was much momentum for the bill due to renewable energy, which was the attractive aspect of the legislation and not the contracting aspect.

Michael Transue, AGC, said the most troubling aspect of the bill is the ability to revise bids after submittal and then award. He said he is willing to provide the CPARB with the AGC's perspective on the legislation. The AGC will also be requesting a veto of the bill.

Mr. Ballew said there appears to be much opposition to the bill. He asked if there was the opportunity to address the legislation before it was passed. Representative Haigh said opposition was voiced but not necessarily heard. Mr. Ballew suggested it might be appropriate for CPARB to suggest what needs modification within the legislation. Representative Haigh advised there can be no changes at this level and that the only option available at this point is to request a veto by the Governor.

Discussion ensued about whether CPARB should send a letter to the Governor requesting consideration that the Governor should not sign the bill and that the CPARB has some concerns about the legislation. Nancy Deakins reminded members that it wasn't that the CPARB didn't address the issue but rather the CPARB agreed to follow its strategic plan and work first on the most pending issues with other issues to be addressed later in the summer after the majority of the work on reauthorization was completed.

Ms. Yang suggested conveying that the legislation has undermined the CPARB's ability to serve the mission the legislature has delegated to the CPARB and that the CPARB needs the legislature's assistance in doing its job.

Representative Haigh commented on not wanting to undermine the CPARB. She indicated she would appreciate a letter from the CPARB to the Governor no later than by the close of business.

Mr. Sharp said he is willing to support a letter in a limited response as it wasn't too long ago that a previous rendition of the CPARB was shut down by the legislature for overstepping its authority. He said he is concerned that the CPARB not overstep its authority and that industry organizations that are represented can convey the concerns about the legislation. He suggested conveying in a positive way that the CPARB was established to address these issues and is willing to address the issue if referred by the legislature. He recommended not conveying a request for the Governor to veto the legislation, because it may be overstepping the CPARB's role.

Discussion followed about what elements the letter to the Governor should include. Mr. Eng suggested expressing a strong concern that the CPARB was created to address such legislation, and that the CPARB is represented industry-wide and that its ability to be successful is based in part, upon the willingness of the members of the industry to use the board as a vehicle to discuss legislation. When legislation is passed outside of the CPARB's process it tends to undermine the ability of the CPARB to function as it was created to do so by the legislature.

Discussion followed about a potential motion. It was noted that if the CPARB elects to respond, the response must be sent immediately. Mr. Kommers expressed a preference for the CPARB to request the Governor veto the legislation with a positive recommendation that the Governor forward the issue to the CPARB for its review and recommendation.

Ms. Yang asked whether a combination of a letter from the CPARB that expresses strong concerns about the way the process was or was not followed coupled by a specific letter enunciating the same concerns from agencies and labor would have the same effect. Mr. Kommers suggested it wouldn't be the same but would be preferable than doing nothing.

Representative Haigh responded to the discussion and suggested there is value in organizations writing a letter from their perspective as well as a value from the CPARB conveying that the CPARB wants to deal with the issue as a collective body and would like to pursue a recommendation next year.

Chair Lynch asked whether there is preference by members to send a letter conveying the CPARB's concerns. Members expressed varying opinions about the tone of the letter.

**Ed Kommers moved, seconded by Dave Johnson, to send a letter to the Governor expressing the CPARB's concerns and request prior to enactment of the legislation that it be brought back the CPARB for a review and recommendation.**

**Rodney Eng moved, seconded by Rocky Sharp, to amend the motion to authorize the Chair to write the letter on behalf of the CPARB to the Governor.**

**The amendment to the motion carried.**

**The amended motion carried. Mr. Ballew abstained.**

Dick Goldsmith commented that it may be worthwhile to emphasize the breadth of the composition of the CPARB so that the Governor's knows that the industry is represented.

Mr. Transue said for the last several years, the association has opposed the legislation. The legislation was not referred to Representative Haigh's committee but to the Technology Committee instead in the House. Given the comments by the CPARB, Mr. Transue said the individual organizations have worked the issue very hard for the last several years and that there are likely a handful of reasons why the legislation was passed notwithstanding all the arguments made either in caucus, in the House, or committees in terms of the negative implications of the legislation.

The meeting recessed for a break from 10:26 a.m. to 10:47 a.m.

#### **Reports from Subcommittees (Continued)**

***Data Collection Subcommittee – Darlene Septelka***

Ms. Septelka reviewed several sample documents the subcommittee developed for reporting data.

The first document is a list of benchmark data items. Currently, the subcommittee is working on defining the data elements to benchmark the items. She referred to the *Schedule Performance* that shows the formula of how the items are calculated for benchmarks. There have been no changes since the last meeting. The project information sheet will be available both electronically and for manual input.

Ms. Septelka noted for the benchmark data items, all data elements have been collected for boxes that are gray. Boxes remaining will be completed by the next meeting equating to the completion of all data elements for all the benchmark items. The subcommittee will also look at other types of data for collection. Most of the information pertains to owner collected data. However, other types of data may include a team survey where information is received from subcontractors on a project. That level of the work has not been completed. Potentially, there would be a website that included tabs for project survey and team survey to enable the collection of two different types of data.

Ms. Septelka noted Ms. Crowson has indicated an interest in adding some diversity questions to include in the data collection.

Chair Lynch asked whether the forms enable collection of data for conventional projects as well to compare to DB or GC/CM projects to conventional projects. Ms. Septelka replied the forms are generic and can be applied to any type of a project. A box is included to designate the project delivery method. Chair Lynch asked at what dollar level project information will be collected. Ms. Septelka said for alternative public works projects, the minimum project is \$10 million and above. She recommended that for collection of data from schools the project cost should not be less than \$5 million.

Representative Haigh mentioned the subcommittee does not include any representatives from the joint legislative audit review committee or anyone from the State Auditor's Office for performance. She suggested reviewing the work with those representatives to seek input. Ms. Septelka noted it might be a good time next month to review the information as most of the data elements will be defined at that time.

Chair Lynch suggested inviting Steve Massey from OFM to attend the subcommittee meetings as well as representatives from the Joint Legislative Audit Review Committee (JLARC). Additionally, GA wants to begin work on the internet-based system so input can be initiated. Ms. Septelka noted the survey will include only the basic information that will be needed to benchmark and measure. She said the forms will be of a reasonable length to handle for a web-based system.

Mr. Mequet asked about collecting data during milestones of a project rather than during the planning, design, and contraction phases. Ms. Septelka reported the subcommittee has not developed a recommendation at this point. The project phase boxes are included on the draft form, with the understanding the subcommittee will make a recommendation to whether the data should be collected at the end of the project or whether at the beginning. The subcommittee will likely provide a recommendation for data collection to be at the beginning, after the turnover from design to construction, and once after the end of construction. For longer projects, it might not be realistic to collect the data at the end.

Mr. Ballew asked if the data collection process will enable a differentiation between favorable versus non-favorable change orders. Ms. Septelka responded that a question has been added at the end asking, "Was the project completed to meet the owner's fiscal needs?" A list of possible choices will be developed consisting of a pull down menu of choices as well as a list of change order types.

Ms. Septelka reported the next subcommittee meeting is on Friday, April 7. Representative Haigh recommended contacting Linda Long at the Auditor's Office. Ms. Deakins offered to invite someone from the

State Auditor's Office to attend the next subcommittee meeting. Ms. Septelka confirmed she will contact representatives from JLARC as well.

***Expansion Subcommittee – Olivia Yang***

Ms. Yang reported the subcommittee initially developed a six-month work plan. In February and March, the subcommittee committed to reviewing project attributes for GC/CM, and in April and May, definitions of owners using GC/CM, DB, or Job Order Contracting (JOC) would be reviewed. DB will be reviewed in June and JOC is scheduled for review in July. Subcommittee members agreed at its last meeting that until those issues were resolved, new alternatives would not be reviewed, such as best value. The notes are a continuation of the project attributes discussion the subcommittee undertook at its February meeting. Several attributes were reviewed – contract design involvement where having a GC/CM on board during design would be useful and what that involved, and where early procurement of packages would be useful for a project along with examples. These are the issues that were continued at the last meeting. The subcommittee developed a list of attributes of what projects for GC/CM would be appropriate that includes such things as, where projects have a complex coordination or scheduling need; projects that are occupied; projects involving or complex or technical work environments; and projects that involve historic renovation. The attributes are not likely controversial by themselves, but then again, it depends on the interpretation.

The subcommittee achieved some consensus on how to proceed on the subject of project attributes – such as working in concert with the notion of a centralized review board. Ms. Yang cited the example of a new owner that would go before the central project review board; the owner would need a statement of the public benefit that would accrue in using GC/CM for the project. In other words, select the attributes that are listed that are appropriate or apply to the project to make the owner's case that the project should utilize the GC/CM process.

The subcommittee is on track with its work schedule. At the end of the next two months the subcommittee will take what it has for owner definitions and review it in concert with projects rather than considering them in isolation.

Mr. Eng has offered to draft legislation that captures what is known about project attributes.

Chair Lynch asked whether the subcommittee's work with respect to owner and project attributes will replace the current statute. Ms. Yang said the subcommittee discussions were not on that basis but rather in the context of what projects and what owners along the lines of what are those things that make a project or owner rise above DBB and what is so special about the project attribute or owner criteria that qualifies for GC/CM.

Chair Lynch indicated that if the current requirements are not part of the consideration, it could be envisioned as a large expansion. Ms. Yang acknowledged that it could be viewed as a large expansion but noted the subcommittee has not discussed the owner criteria at this point. The dollar limit has not been discussed in great detail. However, if the project is too small, there is acknowledgement that there are administrative costs that would not make it cost effective to run a GC/CM process. The subcommittee has focused on what is it about a project that makes it appropriate for GC/CM.

Ms. Yang noted the subcommittee agreed with Mr. Eng's suggestion of including commentary within the legislation similar to what is included in the statute pertaining to the Uniform Commercial Code (UCC) that includes statutory language and official comments to include two levels of comments – one by the original drafters of the UCC and official comments from the Washington committee that adopted and made minor changes to the UCC. Mr. Eng said the concern is that the issue doesn't address itself nicely to concise legislative language because there are building and construction concepts that are difficult to summarize in statutory language of 10 to 15 words or less. A comment section can allow more expansive comments.



Ms. Yang said the subcommittee's approach is to address what is appropriate and what are the issues that will make a project and an owner successful. It is addressing why a project should be GC/CM or why the owner qualifies to undertake a GC/CM process. Legislation and official commentary along with an oversight board with guidelines together will be a better and more comprehensive response to what is needed.

Mr. Kommers requested action on his replacement to the Data Collection Subcommittee.

**Rodney Eng moved, seconded by Rocky Sharp, to appoint Mark Gauger, to replace Ed Kommers as a member of the Data Collection Subcommittee. Motion carried.**

### **CPARB Strategies – Are we on track?**

Chair Lynch said it appears the subcommittees are on track. According to the strategic plan, by mid-summer there will be some specific recommendations for legislation for reauthorization for the 2007 legislative session. Other subcommittee work that is progressing well is data collection. By December, the CPARB should have information to share with the legislature to support the reauthorization request. The Expansion Subcommittee also appears to be focusing on the right issues at the right time.

Chair Lynch asked for comments and concerns about progress on the subcommittees. He offered that he is pleased with the level of effort by the subcommittees and the commitment by members to work on the issues.

Representative Haigh said a recommendation will be required for reauthorization of the CPARB as well as an operating budget. At some point, language will need to be drafted. She suggested submitting legislation as a separate bill and not bundling it with the current legislation (RCW 39.10).

### **Set Next Meeting Agenda**

Chair Lynch reported he is unable to attend the May meeting. Representative Haigh confirmed her attendance.

Members and staff reviewed the issues tracking form and offered comments on projected completion dates.

The meeting recessed from 11:28 a.m. to 11:36 a.m. pending receipt of the draft letter to the Governor.

Members reviewed the draft letter to the Governor and offered editorial suggestions. Ms. Yang suggested the paragraphs in the following order – paragraph 2, 3, 1, and 4 and remove “veto.” Mr. Eng suggested the first sentence could read, “CPARB writes to you to express strong concerns regarding HB....” Mr. Eng said he is concerned about the fourth sentence and suggested focusing more on the positive rather than the negative.

Chair Lynch confirmed member's comments and the desired tone of the letter. He indicated GA's legislative staff person will review the letter prior to submission to the Governor.

### **Adjournment**

Chair Lynch adjourned the meeting at 11:43 a.m.

---

John Lynch, Chair, CPARB

*CPARB FINAL MINUTES*  
*MARCH 9, 2006*

Prepared by: Valerie Gow, Recording Secretary  
Puget Sound Meeting Services